

IN THE CIRCUIT COURT OF LEWIS COUNTY, MISSOURI

STATE, ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General, and the)	
MISSOURI DEPARTMENT OF)	
NATURAL RESOURCES, and the)	
MISSOURI CLEAN WATER)	
COMMISSION)	
)	
Plaintiff,)	
v.)	Case No. CV601-3CC
)	
CNS CORPORATION)	
d/b/a SHARPE LAND & CATTLE)	
COMPANY,)	
)	
Defendant.)	

CONSENT JUDGMENT

COMES NOW Plaintiff, State of Missouri, ex rel. Jeremiah W. (Jay) Nixon, Attorney General, the Missouri Department of Natural Resources (Department) and The Missouri Clean Water Commission (Commission) and Defendant, CNS Corporation d/b/a Sharpe Land & Cattle Company (CNS), and by their respective attorneys, hereby agree to the entry of this Consent Judgment. The Court has read Plaintiff's petition and is aware of its contents. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve the issues raised by the petition and that the parties want to terminate this controversy and consent to the entry of this judgment without trial.

This Consent Judgment is made and agreed upon and submitted to the Court for the purposes of settlement only, upon the condition that the Court approve it in its entirety. In the event the Court does not approve of this Consent Judgment in its entirety, it shall be null and void and of no effect in this or any other proceeding. The parties understand and agree

that each and every term of this consent decree shall be enforceable by further order of the Court, and to that end, this Court retains jurisdiction of the matter in order to enforce each and every term of this judgment. The Court finds the terms of this Consent Judgment to be in the public's interest and to protect the public's interest.

The parties hereto, having consented to the entry of this Consent Judgment, now, therefore, before the taking of any testimony and upon the pleadings, it is hereby ORDERED, ADJUDGED AND DECREED.

I. JURISDICTION

1. This Court has jurisdiction over the subject matter herein and of the parties consenting hereto pursuant to Chapter 644, RSMo, the Missouri Clean Water Law.
2. Pursuant to § 644.076.1, RSMo, venue is proper in this Court.

II. PARTIES BOUND

3. The provisions of this Consent Judgment shall inure to the benefit of and shall be binding upon the parties to this judgment, their agents, assigns, successors, and employees.

III. OBJECTIVES OF THE PARTIES

4. The objectives of the parties to this Consent Judgment are to protect human health and the environment and to address the appropriate management of animal waste associated with CNS's Class IA concentrated animal feeding operation (CAFO) as well as the remediation of potential environmental impacts caused by the CAFO.
5. Nothing in this Consent Judgment shall be construed to issue a permit to CNS for the actions to be taken by CNS hereunder.

IV. DEFINITIONS

6. As used in this Consent Judgment, the term "CAFO" means all property of defendant CNS used or impacted by CNS's concentrated animal feeding operation.

V. FACTUAL BASIS

7. Plaintiff alleges that in January and February of 1999, CNS's lagoon overflowed and discharged water contaminants into an unnamed tributary of Troublesome Creek and thereby caused pollution.

8. Plaintiff alleges that CNS constructed a domestic wastewater treatment lagoon without first obtaining a construction permit.

9. Plaintiff alleges that CNS did not properly maintain the CAFO's solids separator, creating solids build-up near the lagoon inlet pipe.

10. Plaintiff alleges that CNS submitted as-built drawings that showed construction that had not actually taken place.

11. Plaintiff alleges that CNS failed to conduct land application operations to prevent runoff.

12. Defendant denies each of the above allegations.

VI. TERMS

13. CNS shall:

(a) operate and maintain a new solids separator for separation of waste solids from animal waste effluent generated by CNS's dairy operation;

(b) meet with the Department to confirm the measures that must be taken by CNS, if any, to insure that CNS has "a failsafe containment

structure or earthen dam that will contain, in the event of an unauthorized discharge, a minimum volume equal to the maximum capacity of flushing in any twenty-four hour period from all gravity outfall lines, recycle pump station and recycle force mains.” Section 640.730.1, RSMo 2000;

(c) complete construction of the secondary containment structures deemed desirable under subparagraph (b), *supra*, no later than twelve months after the date of entry of this Consent Judgment.

14. No later than one hundred twenty (120) days after the date of entry of this Consent Judgment by the Court, CNS shall submit an Odor Control Plan in accordance with the Missouri Air Conservation Law, Chapter 643, RSMo. This plan shall be submitted to the Department’s Air Pollution Control Program.

15. CNS acknowledges that solid and demolition waste is buried on Sharpe Land & Cattle Company property at the following location: 6 acres in the NE, NE, Sec. 11, Township 60, Range 9 West, Lewis County, Missouri. CNS and the Department agree that the waste can remain buried in this location and that CNS is not required to remove that waste now or in the future, though it may elect to do so at any time. CNS agrees to file a notice regarding the existence and precise location of the above referenced buried solid waste with the Lewis County Record of Deeds within thirty (30) days of the date of entry of this Consent Judgment. CNS agrees to provide a copy of the notarized and properly recorded immediately above-referenced notice to William J. Bryan, at the address listed in § XIII, *infra*, within thirty (30) days of filing. CNS must maintain vegetative cover at the disposal area in order to maintain the integrity of that area so long as the above-referenced waste remains buried there.

Should CNS at any time opt to remove this illegally deposited waste, it must provide at least ten (10) days prior notice to the Department and allow Department staff to oversee the removal. Following removal of the waste, CNS may remove the above-mentioned notice from the deed and must revegetate the area and provide receipts that demonstrate proper disposal of the waste to the Department, within forty-five (45) days of such waste removal.

16. CNS agrees not to bury or burn solid or demolition wastes, including waste tires, in violation of the Missouri Solid Waste Management Law, Chapter 260, RSMo. At any time after CNS executes this Consent Judgment, should CNS discover any amount of dumped or buried solid or demolition wastes at any location on property owned by CNS, that was created, used or deposited by CNS, CNS agrees to notify the Department and work in good faith with the Department in order to reach an agreement as to how the site should be handled, unless CNS and the Department agree that the wastes may be left buried and recorded on the deed for the Sharpe Land & Cattle Company property. In the event that CNS is required to remove the waste and dispose of it properly, CNS must provide receipts for that disposal to the Department within forty-five (45) days of the date the waste is removed and revegetate the area. Further, CNS must stack any sidewalls of tires in an orderly fashion when not in use so as not to retain water, in accordance with § 260.270.7, RSMo 2000.

17. CNS agrees to obey and abide by the Missouri Clean Water Law, Chapter 644, RSMo, and its implementing regulations at all times at the CAFO.

VII. PAYMENTS

18. CNS agrees to pay the sum of One Hundred Sixty-Five Thousand Dollars (\$165,000.00) to the State of Missouri. Of this amount, One Hundred Ten Thousand Dollars (\$110,000.00) shall be paid within twenty-one (21) business days of entry of this Consent Judgment or within three (3) days after the permit referenced in § IX, *infra*, is placed on public notice, whichever is later with the balance of Fifty-Five Thousand Dollars (\$55,000.00) to be suspended so long as CNS complies, in all respects, with all Terms of this Consent Judgment, as set forth in § VI of this document. Should CNS fail to comply with the Terms of this Consent Judgment, the suspended amount shall be due and payable within ten (10) days of demand by an assistant attorney general.

19. CNS shall cause to be issued a certified check in the amount of One Hundred Ten Thousand Dollars (\$110,000.00) made payable to the State of Missouri. This check shall be delivered to the Attorney General of Missouri, P.O. Box 899, Jefferson City, Missouri 65102-0899, Attention: William J. Bryan, Assistant Attorney General, or designee within twenty-one (21) business days of entry of this Consent Judgment or within three (3) days after the permit referenced in § IX, *infra*, is placed on public notice, whichever is later. Failure to deliver this certified check in the amount of One Hundred Ten Thousand Dollars (\$110,000.00) made payable to the State of Missouri within the immediately above-mentioned time frame shall result in stipulated penalties of Five Hundred Dollars (\$500.00) per day for each day the check is late. In the event CNS timely fulfills all Terms of this Consent Judgment, as set forth in § VI of this document, the deferred and suspended amount (i.e. \$55,000.00) shall be automatically and finally forgiven without further action of the Court.

20. The stipulated payments set forth below shall be assessed against defendant any time defendant fails to comply with the Terms of this Judgment, as set out in § VI, *supra*, unless a *force majeure* event has occurred, as defined below, and the Department has approved the extension of a deadline as required by § XI (*force majeure*) or the Department has approved the extension of a deadline for other good cause. Compliance by defendant shall include completion of an activity or any matter under this Judgment in accordance with the provisions of § VI of this Judgment and within the specified time scheduled in and approved under this Judgment.

a. For failure to commence, perform or complete any work required by this Consent Judgment and in accordance with the provisions of this Consent Judgment or at any time required pursuant to this Consent Judgment.

(1) \$200.00 per day for the first one to thirty days of such violation;

(1) \$500.00 per day for the thirty-first through forty-fifth day of such violation; and

(2) \$1,000.00 per day for each day of such violation thereafter.

b. Stipulated payments shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated payments for separate violations of this Consent Judgment. Stipulated payments shall continue to accrue regardless of whether the Department has notified the defendant of a violation.

c. All stipulated payments owed to the State of Missouri under this section shall be due and payable within thirty (30) days of the Department's written demand for payment of the stipulated payments. Such a written demand will describe the violation of this Judgment in detail and will indicate the amount of stipulated payments due.

d. Interest shall begin to accrue on any unpaid balance on the thirty-first day after the date of the Department's demand letter and will accrue until such stipulated payments and interest have been paid in full. Interest shall accrue at the current value of funds rate (i.e., one year Treasury Bill interest rate as published in The Wall Street Journal as of the date of the above-mentioned demand letter) established by the Secretary of the United States Treasury.

e. All stipulated payments shall be made payable by certified or cashier's check to the State of Missouri. Payment shall be sent to the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102-0899, Attention: William J. Bryan, Assistant Attorney General, or designee.

f. The stipulated penalties provided for hereunder, together with payments of the suspended amount set out in paragraph 18 and 19, are the sole and exclusive remedies for breach of any provision of this Consent Judgment, excluding paragraph 17, *supra*.

**VIII. SUBMISSIONS REQUIRING DEPARTMENT
COMMENT OR APPROVAL**

21. After review of any permit application, plan or report, or other item which is required to be submitted by CNS pursuant to this Consent Judgment for issuance, comment, approval, decision or determination by the Department, the Department shall either (1) approve the submission; (2) disapprove the submission, providing CNS with a written notification of the reasons for disapproval and all deficiencies noted; or (3) direct that CNS modify the submission, providing CNS with a written notification of the reasons for modification and all deficiencies noted.

22. In the event of an approval, decision, permit issuance or determination by the Department, CNS shall proceed to take any action required by the permit, plan, report, modification, designation, selection or other item as approved by the Department.

23. Upon receipt of a notice of disapproval or receipt of requirement for modification from the Department, CNS shall, within thirty (30) days or such longer time as specified by the Department in its notice of disapproval or requirement for a modification, correct the deficiencies in writing and resubmit the permit application, plan, report, modification, or other item for approval by delivery of such item to the Department. Any item resubmitted by CNS, as provided in this paragraph, shall be handled by the Department as provided in paragraph 21 hereof. Notwithstanding the notice of disapproval, CNS shall proceed, at the specific direction of the Department, to take any action required by any portion of the submission which the Department has notified CNS in writing is approved.

24. Upon resubmission under paragraph 23 hereof of the permit application, plan, report, modification, or other item for approval, the Department shall either approve

such resubmittal, or shall disapprove such resubmittal and notify CNS of the date of such in writing.

25. The running of the 12-month time periods specified in § VI above shall be tolled while the Department is processing any submittal relating to installation of “secondary containment” structures if required by § 640.730.1, RSMo 2000, by CNS hereunder.

26. All applications (Applications) for construction permits, operating permits, or modifications thereof which CNS may hereafter submit to the Department shall be processed by the Department within 180 days. At CNS’s discretion, if so stated in writing to the Department, the 180 day time period will be tolled for the actual time taken by Sharpe to respond to the Department’s questions, comments or requests for additional information regarding an Application.

IX. ISSUANCE OF OPERATING PERMIT BY MDNR

27. On the next regularly scheduled public notice date or within twenty-one (21) business days of entry of this Consent Judgment, whichever is later, the Department shall place on public notice an operating permit for CNS in form and substance identical to Exhibit A attached hereto and incorporated herein by reference.

X. DISMISSAL OF ADMINISTRATIVE PROCEEDING

28. Within fifteen (15) business days of permit issuance, CNS and Charles N. Sharpe, an individual, shall dismiss with prejudice Appeal No. 343 pending before the Missouri Clean Water Commission.

XI. FORCE MAJEURE

29. For purposes of this Consent Judgment, “*force majeure*” is defined as any event arising from a strike or an act of God, war, riot, or other catastrophe, notwithstanding

CNS's best efforts to avoid the delay. The requirement that CNS exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential *force majeure* event and best efforts to address the effects of any potential *force majeure* event (1) as it is occurring and (2) following potential *force majeure* events such that the delay is minimized to the greatest extent practicable. In such cases, the Department shall exercise its best efforts to the same ends.

30. If any event occurs or has occurred that is likely to delay the performance of an obligation under § VI of this Consent Judgment, whether or not caused by a *force majeure* event, CNS shall notify the Department by telephone within twenty-four (24) hours if CNS knows that the event is likely to cause a delay. Within five (5) business days thereafter, CNS shall provide in writing the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and a statement as to whether, in the opinion of CNS, such event may cause or contribute to an endangerment to the public health, public welfare or the environment.

31. If the Department agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for the performance of any obligation under this Consent Judgment that is directly affected by the *force majeure* event shall be extended by written agreement of the parties pursuant to § XVI of this Consent Judgment for a period of time not to exceed the actual duration of the delay caused by the *force majeure* event. An extension of time for performance of the obligation directly affected by the *force majeure* event shall not, of itself, extend the time for performance of any subsequent obligation under § VI of this Judgment.

32. If the Department does not agree that the delay or anticipated delay has been, or will be caused by a *force majeure* event, or does not agree with CNS on the length of the extension of time, such dispute shall be resolved in accordance with the provisions of § XII of this Consent Judgment. In any such proceeding, to qualify for a *force majeure* defense, CNS shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay in discharging its obligations under § VI of this Judgment has been or will be caused by a *force majeure* event, that the duration of the delay has been or will be warranted under the circumstances, that CNS exercised or is exercising due diligence by using its best efforts to avoid and mitigate the effects of the delay or that the Department has failed to use its best efforts to the same ends.

33. Should CNS carry the burden set forth in paragraph 32 above, the delay at issue shall be deemed not to be a violation of the affected obligation of this Consent Judgment.

XII. DISPUTE RESOLUTION

34. Any dispute which arises with respect to the meaning, application or implementation of this Consent Judgment shall in the first instance be the subject of informal negotiations between CNS and the Department. Notice of the dispute shall be given by the party alleging the dispute. Such notice shall state the specific grounds for the dispute, including any supporting documentation, and the relief requested. The opposing party may file suggestions in opposition and include such documentation as is relevant to deciding the dispute.

35. The Department and CNS shall have thirty (30) days from the receipt of the notice of the dispute to resolve the dispute. If agreement is reached, the resolution shall be

reduced to writing and this Consent Judgment modified, if appropriate. If the Department and CNS are unable to reach complete agreement within the thirty-day period and this period is not extended in writing by mutual agreement of the parties, and the dispute involves water issues, the matter will be submitted to the Commission. The Commission may appoint a hearing officer to review records submitted by the parties, conduct a hearing, and make recommended findings and conclusions to the Commission. The Commission will issue a written decision following its review of the record. The parties will then be entitled to judicial review pursuant to § 536.140, RSMo.

36. The filing of a notice of dispute shall not automatically suspend or postpone any party's obligations under this Consent Judgment with respect to the disputed issue. This provision shall not be construed to prevent either party from requesting a stay of the party's obligations under this Consent Judgment, which request shall be filed at the same time as the notice of dispute.

XIII. NOTICES

37. Whenever, under the terms of this Consent Judgment, notice is required to be given, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice in writing of another individual designated to receive such communications. Notice to the individuals listed below or such other individuals designated pursuant to the foregoing, in writing and hand-delivered or sent by registered or certified mail, postage prepaid, shall constitute complete satisfaction of any notice requirement of the Consent Judgment with respect to the Department and CNS, respectively.

CNS Corporation
Attn: David Melton

William J. Bryan
Deputy Chief Counsel

Ozark National Life
500 East 9th Street
Kansas City, MO 64106

Environmental Protection Division
Missouri Attorney General's Office
P. O. Box 899
Jefferson City, MO 65102

XIV. USE OF THIS JUDGMENT

38. This Consent Judgment shall not constitute an admission with respect to any allegations of the petition, or any fact or conclusion of law with respect to any matter alleged in, or arising out of, the petition. This Consent Judgment may only be used as evidence in an action to enforce its terms.

XV. COVENANT NOT TO SUE

39. During the 12-month time period specified in § VI above, and if CNS performs its covenants under § VI, for all time thereafter, the Department shall not bring any administrative or judicial action against CNS for any violation of any Missouri statute or regulation dealing with health, safety or the environment alleged to have occurred prior to entry of this Consent Judgment.

XVI. MODIFICATION

40. This Consent Judgment may be modified or amended only upon written agreement between the parties, their successors or assigns. All modifications shall be in writing and shall be filed with the Court.

XVII. TERMINATION OF PRIOR CONSENT JUDGMENT

41. The Consent Judgment agreed to by the parties and entered by this Court in Case No. CV697-82CC is hereby terminated. Charles N. Sharpe is a signatory to this Consent Judgment in his individual capacity for purposes of this paragraph and paragraph 27, 28 and 38 only.

IN WITNESS WHEREOF the parties hereto consent to this Judgment by their duly authorized representatives.

CNS CORPORATION

MISSOURI DEPARTMENT OF NATURAL
RESOURCES

By: _____ By: _____

Title: _____

Title: _____

Date: _____

Date: _____

JEREMIAH W. (JAY) NIXON
Attorney General

By: _____

Title: _____

Date: _____

CHARLES N. SHARPE

Date: _____

SO ORDERED:

Date: _____
